

§ 270.3a-7

17 CFR Ch. II (4-1-02 Edition)

required by rule 489 (17 CFR 230.489) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) to file Form F-N with the Commission in connection with the filing of a registration statement under the Securities Act of 1933.

[56 FR 56299, Nov. 4, 1991]

§ 270.3a-7 Issuers of asset-backed securities.

(a) Notwithstanding section 3(a) of the Act, any issuer who is engaged in the business of purchasing, or otherwise acquiring, and holding eligible assets (and in activities related or incidental thereto), and who does not issue redeemable securities will not be deemed to be an investment company; *Provided That:*

(1) The issuer issues fixed-income securities or other securities which entitle their holders to receive payments that depend primarily on the cash flow from eligible assets;

(2) Securities sold by the issuer or any underwriter thereof are fixed-income securities rated, at the time of initial sale, in one of the four highest categories assigned long-term debt or in an equivalent short-term category (within either of which there may be sub-categories or gradations indicating relative standing) by at least one nationally recognized statistical rating organization that is not an affiliated person of the issuer or of any person involved in the organization or operation of the issuer, except that:

(i) Any fixed-income securities may be sold to accredited investors as defined in paragraphs (1), (2), (3), and (7) of rule 501(a) under the Securities Act of 1933 (17 CFR 230.501(a)) and any entity in which all of the equity owners come within such paragraphs; and

(ii) Any securities may be sold to qualified institutional buyers as defined in rule 144A under the Securities Act (17 CFR 230.144A) and to persons (other than any rating organization rating the issuer's securities) involved in the organization or operation of the issuer or an affiliate, as defined in rule 405 under the Securities Act (17 CFR 230.405), of such a person;

Provided, That the issuer or any underwriter thereof effecting such sale exercises reasonable care to ensure that such securities are sold and will be re-

sold to persons specified in paragraphs (a)(2) (i) and (ii) of this section;

(3) The issuer acquires additional eligible assets, or disposes of eligible assets, only if:

(i) The assets are acquired or disposed of in accordance with the terms and conditions set forth in the agreements, indentures, or other instruments pursuant to which the issuer's securities are issued;

(ii) The acquisition or disposition of the assets does not result in a downgrading in the rating of the issuer's outstanding fixed-income securities; and

(iii) The assets are not acquired or disposed of for the primary purpose of recognizing gains or decreasing losses resulting from market value changes; and

(4) If the issuer issues any securities other than securities exempted from the Securities Act by section 3(a)(3) thereof (15 U.S.C. 77c(a)(3)), the issuer:

(i) Appoints a trustee that meets the requirements of section 26(a)(1) of the Act and that is not affiliated, as that term is defined in rule 405 under the Securities Act (17 CFR 230.405), with the issuer or with any person involved in the organization or operation of the issuer, which does not offer or provide credit or credit enhancement to the issuer, and that executes an agreement or instrument concerning the issuer's securities containing provisions to the effect set forth in section 26(a)(3) of the Act;

(ii) Takes reasonable steps to cause the trustee to have a perfected security interest or ownership interest valid against third parties in those eligible assets that principally generate the cash flow needed to pay the fixed-income security holders, provided that such assets otherwise required to be held by the trustee may be released to the extent needed at the time for the operation of the issuer; and

(iii) Takes actions necessary for the cash flows derived from eligible assets for the benefit of the holders of fixed-income securities to be deposited periodically in a segregated account that is maintained or controlled by the trustee consistent with the rating of the outstanding fixed-income securities.

(b) For purposes of this section:

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(1) *Eligible assets* means financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders.

(2) *Fixed-income securities* means any securities that entitle the holder to receive:

- (i) A stated principal amount; or
- (ii) Interest on a principal amount (which may be a notional principal amount) calculated by reference to a fixed rate or to a standard or formula which does not reference any change in the market value or fair value of eligible assets; or
- (iii) Interest on a principal amount (which may be a notional principal amount) calculated by reference to auctions among holders and prospective holders, or through remarketing of the security; or
- (iv) An amount equal to specified fixed or variable portions of the interest received on the assets held by the issuer; or
- (v) Any combination of amounts described in paragraphs (b)(2) (i), (ii), (iii), and (iv) of this section;

Provided, That substantially all of the payments to which the holders of such securities are entitled consist of the foregoing amounts.

[57 FR 56256, Nov. 27, 1992]

§ 270.3c-1 Definition of beneficial ownership for certain 3(c)(1) funds.

(a) As used in this section:

(1) The term *Covered Company* means a company that is an investment company, a Section 3(c)(1) Company or a Section 3(c)(7) Company.

(2) The term *Section 3(c)(1) Company* means a company that would be an investment company but for the exclusion provided by section 3(c)(1) of the Act [15 U.S.C. 80a-3(c)(1)].

(3) The term *Section 3(c)(7) Company* means a company that would be an investment company but for the exclusion provided by section 3(c)(7) of the Act [15 U.S.C. 80a-3(c)(7)].

(b) For purposes of section 3(c)(1)(A) of the Act [15 U.S.C. 80a-3(c)(1)(A)], beneficial ownership by a Covered Company owning 10 percent or more of the outstanding voting securities of a

Section 3(c)(1) Company shall be deemed to be beneficial ownership by one person, *provided that*:

(1) On April 1, 1997, the Covered Company owned 10 percent or more of the outstanding voting securities of the Section 3(c)(1) Company or non-voting securities that, on such date and in accordance with the terms of such securities, were convertible into or exchangeable for voting securities that, if converted or exchanged on or after such date, would have constituted 10 percent or more of the outstanding voting securities of the Section 3(c)(1) Company; and

(2) On the date of any acquisition of securities of the Section 3(c)(1) Company by the Covered Company, the value of all securities owned by the Covered Company of all issuers that are Section 3(c)(1) or Section 3(c)(7) Companies does not exceed 10 percent of the Covered Company's total assets.

[62 FR 17529, Apr. 9, 1997]

§ 270.3c-2 Definition of beneficial ownership in small business investment companies.

For the purpose of section 3(c)(1) of the Act, beneficial ownership by a company owning 10 per centum or more of the outstanding voting securities of any issuer which is a small business investment company licensed to operate under the Small Business Investment Act of 1958, or which has received from the Small Business Administration notice to proceed to qualify for a license, which notice or license has not been revoked, shall be deemed to be beneficial ownership by one person (a) if and so long as the value of all securities of small business investments companies owned by such company does not exceed 5 per centum of the value of its total assets; or (b) if and so long as such stock of the small business investment company shall be owned by a state development corporation which has been created by or pursuant to an act of the State legislature to promote and assist the growth and development of the economy within such State on a state-wide basis: *Provided*, That such State development corporation is not, or as a result of its investment in the small business investment company